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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM A. SERVAAS,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 29A02-0705-CV-435
	)	
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,	)	
	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Steven R. Nation, Judge
Cause No. 29D01-0604-PL-321

April 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

William A. SerVaas appeals the trial court's order granting the Indiana Department of Environmental Management's ("IDEM") motion for summary judgment. He raises several issues, of which we find the following dispositive: whether the trial court erred when it determined that SerVaas's claim was barred by the applicable statute of limitations.

We affirm.

FACTS AND PROCEDURAL HISTORY

In 1973, SerVaas installed a 1,000-gallon underground gasoline storage tank ("UST") at his private residence. In 1975, SerVaas installed a 5,000-gallon UST at the same residence. In the 1980s, IDEM began requiring the owners of USTs in Indiana to provide written notice to it with information about their tanks, such as the existence, location, and ownership of such tanks and other information pertinent to regulatory issues. In 1987, SerVaas provided notice to IDEM that he was the owner of a 5,000-gallon UST. As IDEM does not require registration of USTs smaller than 1,100 gallons, SerVaas did not provide any notice regarding his 1,000-gallon UST.

Sometime after this, SerVaas learned that he would be required to upgrade his USTs to remain in compliance with IDEM regulation or remove them by 1998. SerVaas opted to remove the USTs and filed notice of closure regarding his 5,000-gallon tank. On January 23, 1991, IDEM sent SerVaas a letter regarding laws and standards applicable to UST closure in response to an inquiry it had received from him concerning closing his USTs. The letter did not inform SerVaas that he was required to remove his tanks. Also in early 1991, SerVaas called the IDEM information line about alternative uses for his USTs, as he wished to use them as a tornado shelter, but was told that his 5,000-gallon UST would have to "come out"

very soon. *Appellant's App*. at 17-18, 78, 102. IDEM had no record of this call, and SerVaas did not know the identity of the person with whom he spoke. Soon after this call, SerVaas removed the 5,000-gallon UST.

On February 24, 1998, SerVaas submitted a "Notification for Underground Storage Tanks" to IDEM, in which he identified the 1,000-gallon UST on his property and checked the box marked "Request for Closure." *Appellant's App*. at 109. On February 1998, IDEM sent SerVaas a letter in response to this notification, which informed him of the requirements of closing a UST, similar to the letter sent in 1991. SerVaas removed his 1,000-gallon UST soon after receiving this letter and submitted the requisite closure report to IDEM.

On May 1, 2004, six years after the last tank had been removed, SerVaas filed a Notice of Tort Claim with the Office of the Indiana Attorney General regarding the alleged property damage he sustained when he removed his USTs. This claim was denied on August 19, 2004. On April 7, 2006, SerVaas filed his complaint against IDEM. IDEM filed a motion to dismiss, which the trial court granted and gave SerVaas an opportunity to file an amended complaint. On October 25, 2006, SerVaas filed an amended complaint, to which IDEM filed a second motion to dismiss. On May 1, 2007, the trial court granted this motion to dismiss. SerVaas now appeals.

DISCUSSION AND DECISION

The standard of review for grants of summary judgment is well established.[1] When reviewing a grant or denial of summary judgment, we apply the same standard as the trial court: summary judgment is only appropriate when the designated evidence shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C); *Jacobs v. Hilliard*, 829 N.E.2d 629, 632 (Ind. Ct. App. 2005), *trans. denied*. The burden is on the moving party to designate sufficient evidence to eliminate any genuine issues of material fact, and when this requirement is fulfilled, the burden shifts to the nonmoving party to come forth with contrary evidence. *Jacobs*, 829 N.E.2d at 632. We construe all facts and reasonable inferences to be drawn from those facts in favor of the nonmoving party. *Id.*

SerVaas argues that the trial court erred when it granted summary judgment in favor of IDEM. He contends that genuine issues of material fact exist as to when his cause of action accrued, and therefore, it was improper to grant summary judgment. He alleges that his complaint was timely filed based upon several theories, including that the statute of limitations was tolled because of a continuing duty that IDEM owed to him and that IDEM

[1] Initially, IDEM filed a motion to dismiss arguing that SerVaas's claim was barred by the applicable statute of limitations and for failure to state a claim upon which relief can be granted. *Appellant's App*. at 59. However, evidence outside of the pleadings was presented to the trial court, and therefore, the trial court treated IDEM's motion as one for summary judgment. Ind. Trial Rule 12(B); *Azhar v. Town of Fishers*, 744 N.E.2d 947, 950 (Ind. Ct. App. 2001).

was equitably estopped from asserting the statute of limitations because its negligence induced SerVaas's detrimental reliance.[2]

SerVaas filed his complaint seeking compensation for the alleged taking of his personal property, specifically arguing that IDEM "seized and destroyed" his personal property, the USTs, without just compensation. *Appellant's App*. at 45. SerVaas based his claim upon his phone conversation with an unidentified IDEM employee in 1991, which he contended gave him no alternative but to remove his two USTs rather than use them as tornado shelters. SerVaas admits that the USTs were personal property. Indiana law provides a two-year statute of limitations for damage to personal property. IC 34-11-2-4. "In determining when either a claim of breach of a written contract or tort claim accrues, Indiana follows the 'discovery rule.'" *Strauser v. Westfield Ins. Co.*, 827 N.E.2d 1181, 1185 (Ind. Ct. App. 2005). Under this rule, a cause of action accrues, and the statute of limitations begins to run, when the plaintiff knew or in the exercise of ordinary diligence could have discovered that an injury had been sustained as a result of a tortious act of another or that the contract had been breached. *Id.*; *Del Vecchio v. Conseco, Inc.*, 788 N.E.2d 446, 449 (Ind. Ct. App. 2003), *trans. denied*. The exercise of reasonable diligence means that "an injured party must act with some promptness where the acts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or

[2] An appellant's argument must contain his contentions on the issues presented, supported by cogent reasoning, and each contention must be supported by citations to the authorities, statutes, and the appendix or parts of the record relied on. Ind. Appellate Rule 46(A)(8)(a); *Masonic Temple Ass'n of Crawfordsville v. Ind. Farmers' Mut. Ins. Co.*, 837 N.E.2d 1032, 1037 (Ind. Ct. App. 2005). To the extent that many of SerVaas's arguments are not supported by cogent reasoning, we are not able to address them on appeal.

that some claim against another party might exist." *Perryman v. Motorist Mut. Ins. Co.*, 846 N.E.2d 683, 689 (Ind. Ct. App. 2006).

Here, assuming that SerVaas had a claim arising out of the removal of his USTs, the dates of the alleged loss occurred when he removed his USTs in 1991 and on March 31, 1998 based upon the phone conversation he had with the unidentified IDEM employee in 1991. Any cause of action that he had against IDEM accrued as of these dates. SerVaas did not file his Notice of Tort Claim until May 1, 2004, and he did not file his complaint until April 7, 2006. Therefore, neither of these was filed within two years of when SerVaas's loss occurred.

Affirmed.

RILEY, J., and MAY, J., concur.